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constructed the roadbed for a single-track road under the M. survey. It appeared by expert testimony that a right of way at least 66 feet wide would be required for the construction of such road, and that the center line of a double-track road meant a center line between the two tracks forming the double track, and that the usual distance between the centers of the two tracks is 13 feet. Held, that construing the deed most strongly against the grantor, and in view of the expert testimony it conveyed a strip through complainant's farm 33 feet in width on each side of an initial line parallel with and $6\frac{1}{2}$ feet west of the M. center line of location of the single track.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 16, Deeds, § 316.]

McGEHEE v. TIDEWATER RY. CO.

Sept. 10, 1908.

[62 S. E. 356.]

1. Waters and Water Courses—Surface Waters—Right to Divert.—

Under the common-law rule, contrary to the civil-law rule, as expressed in the Code Napoleon, surface water is regarded as a common enemy, and a landowner may protect his property from it, even if in so doing he throws the water back upon adjoining land; but in Virginia the rule is subject to the qualification that it must not be diverted wantonly, unnecessarily, or carelessly, but must be done in good faith in a reasonable use of the land for its improvement.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 48, Waters and Water Courses, § 128.]

2. Same—Natural Water Courses—Obstruction.—A riparian owner cannot obstruct a natural stream in the improvement of his premises so as to injure adjoining land, however careful he may be in so doing.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 48, Waters and Water Courses, § 43.]

3. Same—Surface Waters—Actions—Instructions.—Defendant railroad filled in a depression along which surface water from the surrounding land habitually flowed, the bottom of which was covered with sod without a defined channel, and the surface water was thereby diverted upon plaintiff's land adjoining the fill. Held, in an action for damages, error to hold as a matter of law that defendant was not bound to supply reasonably adequate means of escape for surface water through its property.

4. Same—Question for Jury—Care Exercised by Defendant.—In an action for diverting surface waters upon plaintiff's land by filling a depression in constructing defendant's station grounds, the question of whether defendant was reasonably prudent and careful to avoid injury to plaintiff's property should have been submitted to the jury under proper instructions.